

LAW OFFICES OF THOMAS K. CROWE, P.C.

1250 24th STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20037

TELEPHONE (202) 263-3640
FAX (202) 263-3641
E-MAIL firm@tkcrowe.com

RECEIVED

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Federal Communications Commission
Office of Secretary

July 2, 2003

BY MESSENGER

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Reply of the Office of the Governor of the Commonwealth of the
Northern Mariana Islands to Joint Opposition of Pacific Telecom Inc.
and Bell Atlantic New Zealand Holdings, Inc.; IB Docket No. 03-115

Dear Ms. Dortch:

On behalf of the Office of the Governor of the Commonwealth of the Northern Mariana Islands ("Office of the Governor") and pursuant to Section 1.45(c) of the Commission's Rules, 47 C.F.R. § 1.45(c), the following is in reply to the Joint Opposition to Petitions to Deny and Comments ("Joint Opposition") submitted by Pacific Telecom Inc. ("PTI") and Bell Atlantic New Zealand Holdings, Inc. ("BANZHI") on June 24, 2003 in IB Docket No. 03-115. By the instant Reply, the Office of the Governor addresses the two specific points discussed below.

A. A *Prima Facie* Showing Has Been Made, and Either Denial or a Hearing is Required.

PTI/BANZHI assert that the Office of the Governor has not met the requisite burden for a hearing by failing to supply specific evidentiary facts. See Joint Opposition at 13, n.33. To the contrary, the Petition to Deny, or, in the Alternative, to Designate for Hearing ("Petition of the Office of the Governor") is bolstered by specific evidentiary facts, including an affidavit signed by the Governor's Senior Policy Advisor as well as numerous press publications, materials filed with the Commission and other materials of which the Commission may take judicial notice. The Petition of the Office of the Governor raises numerous substantial and material questions of fact and clearly makes a *prima facie* showing that a grant of the underlying applications would be inconsistent with the public interest. See 47 U.S.C. § 309(d)(1) and (2). Thus, the

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applications must either be denied or designated for hearing. It is also important to recognize that the Communications Act of 1934, as amended, states that a proceeding involving a certificate under Section 214 will be designated for hearing at the request of a Governor. Thus, a hearing should be granted as a matter of right in this proceeding in the event that PTI/BANZHI's applications are not denied. *See* 47 U.S.C. § 214(b). *See also* 47 C.F.R. § 1.764(b) and Petition of the Office of the Governor at 4, n.6.

B. PTI Cannot Walk Away From Its Misrepresentations and Lack of Candor in IB Dkt. No. 02-111.

PTI/BANZHI also argue that the willful misstatements and omissions in IB Dkt. No. 02-111 cannot be attributed to PTI in the instant proceeding. *See* Joint Opposition at 10-14. PTI and BANZHI appear to misunderstand the application of the Commission's rules regarding misstatements and omissions as they relate to the present proceeding.

Contrary to the statements in the Joint Opposition, it is not former parties to the application Tan Holdings Corp. ("Tan") and Missouri Holdings Corporation that have committed the material misrepresentations and omissions at issue. It is PTI. It was PTI which failed to reveal the serious felony conviction of a party to the application in the proceeding in IB Docket No. 02-111.¹ It was PTI which submitted the subsequent July 17, 2002 letter to the Commission in which then PTI Chairman, George Chiu, offered an implausible explanation as to why the felony conviction was not disclosed.² It was PTI which submitted the November 8, 2002 letter to the Commission containing a statement meant to subversively direct the Commission away from any further investigation of character concerns surrounding the company.³ PTI cannot now successfully claim that because George Chiu was in charge of preparing the applications, any misrepresentations are solely attributable to Mr. Chiu.⁴ PTI was the applicant in IB Dkt. No. 02-

¹ *See* Petition of the Office of the Governor at 6. Specifically, PTI answered question 37 on FCC Form 312 (inquiring whether the applicant or any party to the application had ever been convicted of a felony) in the negative. *See* Reading Broadcasting, Inc. for Renewal of License of Station of WTVE(TV), Channel 51, Reading, Pennsylvania and Adams Communications Corporation, 16 FCC Rcd. 8309, para. 223 (2001) ("*the checking of a 'no' to a direct question asking about 'adverse final action taken' related to 'fraud' results in disqualification for intentional misrepresentation or lack of candor.*").

² *See* Petition of the Office of the Governor at 7 and Letter from Kenneth D. Patrich and Timothy J. Cooney, Attorneys for PTI, to Marlene H. Dortch, Secretary, FCC, dated July 17, 2002 *available at* http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513282304 (visited July 1, 2003) ("July 17, 2002 PTI Letter").

³ *See* Petition of the Office of the Governor at 7.

⁴ *See* SBC Communications Inc, Apparent Liability for Forfeiture, 24 CR 1225 at para. 80 (2001) ("Section 217 of the Act explicitly states, "[i]n construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier ... acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier ... as well as that of the person.""). *See also* Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC Rcd. 1179, para. 78 (1986) ("[a] corporation must be responsible for the FCC-related misconduct occasioned by the actions of its employees....")("Character Qualifications").

111 and now, in the instant proceeding involving essentially the same transaction, remains the applicant. The Commission's rules unmistakably state that it is the *applicant* who is responsible for the accuracy of statements made to the Commission.⁵ Additionally, Commission precedent is clear that "those who control the corporation must be held accountable for the conduct of those who have been delegated the authority to act in its name."⁶ Prospector Investment Holdings Inc. ("Prospector"), previously a 50% shareholder of PTI and now the 100% shareholder, is the only corporation which has ever continuously held a 50% or greater controlling shareholder interest in PTI (as well as controlling at least three of the six board of director seats). Thus, PTI and Prospector are responsible for the intentional misrepresentations and lack of candor before the Commission designed to aid their effort to acquire the Commonwealth telecommunications network.⁷

Although PTI and Banzhi are correct that the underlying felony of making fraudulent statements to government officials, brought to light by the Office of the Governor in the prior proceeding, was attributable to companies which are no longer a party to the application, PTI's continued dishonesty throughout the transfer proceedings provides a compelling basis for disqualification in the instant proceeding.⁸ PTI and Banzhi go to great lengths in their Joint Opposition to attempt to explain away the relevancy of the acts of Tan here. However, it is the acts of *PTI* which mandate disqualification. For example, in attempting to try to explain why PTI had failed to reveal the felony conviction of an affiliate, former PTI Chairman George Chiu stated that he did not feel that the conviction would be relevant to the Commission's review.⁹ He supplied this explanation even though a company for which he previously served as Vice President had been chastised for failure to reveal the very same conviction to the U.S. Department of Transportation in an application for a certificate before that Department.¹⁰

⁵ See 47 C.F.R. § 1.65 ("each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceeding involving a pending application.")

⁶ See Petition of the Office of the Governor at 8, citing Northwestern Indiana Broadcasting Corp., Initial Decision, 65 FCC 2d 73 (ALJ 1976).

⁷ The importance of honesty before the Commission cannot be understated. See Character Qualifications at paras. 60 ("[t]he Commission is authorized to treat even the most insignificant misrepresentation as disqualifying" (citation omitted)) and 61 ("[w]e believe it necessary and appropriate to view misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust.").

⁸ See *Schoenbohm v. FCC*, 204 F3d 243, (DC Cir. 2000) ("the FCC found that Schoenbohm demonstrated an absence of rehabilitation by making deliberate misrepresentations and displaying a lack of candor during the renewal proceedings. Moreover, because these occurred in the course of the agency's own proceedings, they were a rationale for nonrenewal that went beyond the felony conviction alone.") [internal citations omitted].

⁹ See July 17, 2002 PTI Letter and Attachment A.

¹⁰ *Id.*

Additionally, PTI stated that no further action had been taken with respect to the consent judgment when it was fully aware that an investigation had been launched by the U.S. Department of Labor and that preliminary findings had been reached that showed violations of the consent judgment.¹¹ In light of these facts, any claim by PTI that its statement was not an intentional misrepresentation of the truth is disingenuous. It is clear PTI blatantly offered this ambiguous statement in the hopes of dissuading the Commission from investigating the matter further.

Despite the pattern of continued intentional misrepresentations made in connection with the transfer of control of the licenses at issue in the instant proceeding,¹² PTI attempts to claim that it has somehow rehabilitated itself.¹³ However, rehabilitation requires some voluntary, affirmative action undertaken promptly on the part of the party responsible for the misconduct. Here, PTI failed for over a year to remove George Chiu from his position as chairman, choosing instead to affirm the repeated misconduct occurring in the prior proceeding.¹⁴ Additionally, Tan voluntarily withdrew from its ownership of PTI on its own accord and presumably under its own terms. Neither PTI nor Tan has made any indication to the Commission that Tan's withdrawal was made for the purpose of rehabilitating PTI's character. Now, PTI attempts to claim that *it* has implemented changes to its management and ownership structure. The events show that although PTI may have had the ability to be proactive in mitigating the misrepresentations to the Commission, in actuality it did nothing. Instead, the continuous pattern of intentional misrepresentations and omissions demonstrates an absence of rehabilitation.¹⁵

Although the character of PTI is not the applicants' only shortcoming, it is important that it not be underestimated by the Commission. As the Commission is well aware, honesty is critically important to the government's ability to effectively regulate a licensee. Placing the

¹¹ See Petition of the Office of the Governor at 7.

¹² See SBC Communications Inc, Apparent Liability for Forfeiture, 24 CR 1225 at para. 80 (2001) ("*the apparent misrepresentation is particularly egregious here because it occurred in the context of an investigation into possible misrepresentation, i.e., in a context where the company and its employees should have had a heightened awareness of the importance of not submitting misrepresentations to the Commission.*").

¹³ See Joint Opposition at 13.

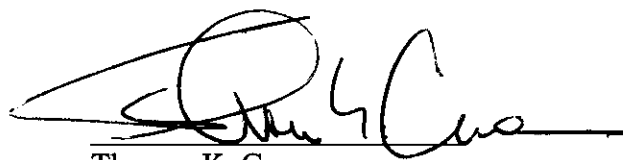
¹⁴ Cf. PCS 2003, L.P. For Broadband Block C Personal Communications Systems Facilities, 12 FCC Rcd. 1681, para. 17 (1997) (disqualification not warranted where "*applicant took aggressive steps to remove from ownership and control positions those responsible for the misrepresentation*") (emphasis supplied). See also Character Qualifications at para. 78 ("*[m]erely standing back and waiting for disaster to strike or for the Commission to become aware of it will not insulate corporate owners from the consequences of misconduct.*").

¹⁵ See Schoenbohm v. FCC, 204 F3d 243, (D.C. Cir. 2000).

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monopoly telecommunications network in the distant and strategically-located Commonwealth under the control of parties who have failed to demonstrate that they have the character necessary to ensure truthfulness before the Commission can only have dire consequences. As such, the applications of PTI and Banzhi should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gregory E. Kunkle', written over a horizontal line.

Thomas K. Crowe
Gregory E. Kunkle,
Counsel for the Office of the Governor
of the Commonwealth of the Northern
Mariana Islands

cc: Attached Service List

CERTIFICATE OF SERVICE

I, Sandra Safro, a legal assistant with the Law Offices of Thomas K. Crowe, P.C., certify that on July 2, 2003, a copy of the foregoing *Reply of the Office of the Governor of the Commonwealth of the Northern Mariana Islands to Joint Opposition of Pacific Telecom Inc. and Bell Atlantic New Zealand Holdings, Inc.*; IB Docket No. 03-115, was served by first class United States mail, postage prepaid, or by hand delivery where indicated by an asterisk (*), upon the parties listed below.

Michael K. Powell*
Chairman, Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C. 20554

Kathleen Q. Abernathy*
Commissioner, Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C. 20554

Michael J. Copps*
Commissioner, Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C. 20554

Kevin J. Martin*
Commissioner, Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C. 20554

Jonathan S. Adelstein*
Commissioner, Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C. 20554

Daniel K. Akaka
United States Senator, Hawaii
141 Hart Senate Office Building
Washington, D.C. 20510

Conrad Burns
United States Senator, Montana
Chairman, United States Subcommittee on
Communications
428 Hart Senate Office Building
Washington, D.C. 20510

Conrad Burns
United States Senator, Montana
Chairman, United States Subcommittee on
Communications
187 Dirksen Senate Office Building
Washington, D.C. 20510

Hon. George Miller
United States Representative, California
2205 Rayburn HOB
Washington, D.C. 20515-0507

John McCain
United States Senator, Arizona
Chairman, United States Committee on
Commerce, Science and Transportation
241 Russell Senate Office Building
Washington, D.C. 20510

John McCain
United States Senator, Arizona
Chairman, United States Committee on
Commerce, Science and Transportation
508 Dirksen Senate Office Building
Washington, D.C. 20510-6125

Madeleine Z. Bordallo
United States Representative, United States
Territory of Guam
427 Cannon House Office Building
Washington, D.C. 20515-5301

Fred Upton
United States Representative, Michigan
Chairman, United States Subcommittee on
Telecommunications and the Internet
2125 Rayburn House Office Building
Washington, D.C. 20515

Fred Upton
United States Representative, Michigan
Chairman, United States Subcommittee on
Telecommunications and the Internet
2161 Rayburn House Office Building
Washington, D.C. 20515

W.J. Tauzin
United States Representative, Louisiana
Chairman, United States Committee on
Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

W.J. Tauzin
United States Representative, Louisiana
Chairman, United States Committee on
Energy and Commerce
2183 Rayburn House Office Building
Washington, D.C. 20515

Tom Ridge
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Felix Perez Camacho
Governor, Territory of Guam
P.O. Box 2950
Hagatna, Guam 96932

Clyde Lemons, Jr.
Acting Attorney General
Commonwealth of the Northern
Mariana Islands
2nd Floor Hon. Juan A. Sablan
Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

Marvin M. Dodge
Commander, U.S. Navy
Assistant Chief of Staff for Civil-Military
Affairs
U.S. CINCPAC REP Guam, CNMI, FSM &
Palau
Attn: Code N5
PSC 455 Box 152
FPO AP 96540-1000

Kenneth L. Doroshov
Trial Attorney
U.S. Department of Justice
Criminal Division, Computer Crime and
Intellectual Property Section
1301 New York Avenue, N.W., Suite 600
Washington, D.C. 20005

Josephine Scarlett, Office of Chief Counsel
National Telecommunications &
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue N.W.,
Room 4713
Washington, D.C. 20230

Paul R. Schwedler
Trial Attorney (General)
Defense Information Systems Agency
702 South Courthouse Rd.
Arlington, V.A. 22204-2199

Jeannine R. Aguon
Senior Legislative Assistant
2428 Rayburn Building
Washington, D.C. 20515

Marsha MacBride*
Director, Homeland Security Policy Council
Federal Communications Commission
Office of the Chairman
445 12th Street, S.W.
Washington, D.C. 20554

Larry R. Parkinson
General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

James Lovelace
Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Suite 7877
Washington, D.C. 20535

Office of the U.S. Coordinator for
International Communication and
Information Policy
U.S. Department of State
Mail Code: EB/CIP
2201 C Street, N.W.
Room 4826
Washington, D.C. 20520-5820

David B. Cohen
Deputy Assistant Secretary for Insular
Affairs
Office of Insular Affairs
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Jack Zinman
Senior Advisor, Office of the Assistant
Secretary for Communications and
Information
National Telecommunications &
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue N.W.
Room 4898B
Washington, D.C. 20230

Kent R. Nilsson*
Special Counsel and Deputy Chief
Network Technologies Division
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Room 7B452
Washington, D.C. 20554

Richard Salgado
Trial Attorney
Computer Crime Section
U.S. Department of Justice
1301 New York Avenue, N.W.
Suite 600
Washington, D.C. 20053

Michael S. Mowery
International Vice President—9th District
International Brotherhood of Electrical
Workers
2500 Venture Oaks Way, Suite 250
Sacramento, California 95833-4221

Brenton Greene
Deputy Manager
National Communications System
701 South Courthouse Road
Arlington, VA 22201-2199

Lawrence C. Hale
Director, FedCIRC
7th & D Streets, S.W.
Room 5060
Washington, D.C. 20407

U.S. Department of Homeland Security
Attn: Critical Infrastructure Assurance
Office
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Gardner Foster*
Federal Communications Commission
Policy Division, International Bureau
445 12th Street, S.W.
Room 7-A861
Washington, D.C. 20554

Susan O'Connell*
Federal Communications Commission
Policy Division, International Bureau
445 12th Street, S.W.
Room 7-B544
Washington, D.C. 20554

Erin McGrath*
Federal Communications Commission
Commercial Wireless Division
Wireless Telecommunications Bureau
445 12th Street, S.W.
Room 4-B454
Washington, D.C. 20554

Dennis Johnson*
Federal Communications Commission
Competition Policy Division
Wireline Competition Bureau
445 12th Street, S.W.
Room 6-A461
Washington, D.C. 20554

Neil A. Dellar*
Federal Communications Commission
Transaction Team, Office of the General
Counsel
445 12th Street, S.W.
Room 8-C818
Washington, D.C. 20554

David Strickland*
Policy Division, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 7-B428
Washington, D.C. 20554

Patrick W. Kelley
Deputy General Counsel
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

John G. Malcolm
Deputy Assistant Attorney General
Criminal Division
United States Department of Justice
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530

Representative Herman T. Palacios
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Representative Gloria Dlc. Cabrera
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Representative Pedro P. Castro
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Representative Oscar M. Babauta
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Senator Pete D. Reyes
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Herman Q. Deleon Guerrero
P.O. Box 500825
Saipan, MP 96950-0825

Representative Stanley T. Torres
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Representative Joe P. Deleon Guerrero
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Representative Martin B. Ada
House of Representatives
Thirteenth Northern Marianas
Commonwealth Legislature
Commonwealth of the Northern
Mariana Islands
Post Office Box 500586
Saipan, MP 96950-0586

Anthony A. Das
Senior Vice President/Managing Director
For Asia and the Pacific
PCI Communications, Inc.
135 Chalan Santo Papa, Suite 101
Hagatna, GU 96910

Christopher M. Bennett
General Counsel and Secretary
Bell Atlantic New Zealand Holdings, Inc.
1095 Avenue of the Americas
Room 3828
New York, N.Y. 10036

Jose Ricardo Delgado
Prospector Investment Holdings, Inc.
4/F SGV II Building
6758 Ayala Avenue
Makati City, Philippines

Qualex International*
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Veronica Ahern
Nixon Peabody LLP
401 9th Street, N.W.
Washington, D.C. 20004
Counsel for Governor of Guam

Kenneth D. Patrich
Timothy J. Cooney
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Suite 700
Washington, D.C. 20037

Peter D. Shields
Jennifer D. Hindin
Wiley Rein & Fielding, LLP
1776 K Street, N.W.
Washington, D.C. 20006


Sandra Safo